

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Division 1, Chapter 4, Subchapter 4, Article 12, Section 1600 and Article 15, Sections 1610.1, 1610.3, 1610.4, 1610.9, 1611.1, 1612.3, 1613, 1613.2, 1613.10, 1616.1, 1617.1, 1617.2, 1617.3, 1618.1, and 1619.1 and New Sections 1613.11 and 1613.12 of the Construction Safety Orders; and Subchapter 7, Article 91, Section 4885 and Article 98, Section 4999 of the General Industry Safety Orders.

Cranes & Derricks in Construction (Clean-Up)**SUMMARY**

On August 9, 2010, the U.S. Department of Labor, Occupational Safety and Health Administration (Federal OSHA) promulgated standards revising the Cranes and Derricks Standard found primarily in the federal Construction Standard, 29 CFR Part 1926, to update and specify industry work practices necessary to protect employees during the use of cranes and derricks in construction. California is required to adopt standards at least as effective as federal standards within 6 months of federal promulgation. In order to accomplish this task, an expedited rulemaking process known as a "Horcher Rulemaking" was undertaken, wherein the Board adopted standards which are substantially the same as the federal standards, except for editorial and format differences, or where existing state standards provided a higher level of safety. Board staff was unable to make any other revisions or amendments during the expedited process. Certain issues were identified during the rulemaking, and certain coordination issues with General Industry Safety Orders (GISO) crane standards have subsequently been identified. These items are now proposed to be addressed in this "clean-up" rulemaking process.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at subsection (a)(1) that the Board is “the only agency in the state authorized to adopt occupational safety and health standards.” When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirrors the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- Differs from existing federal standards, in that certain California standards for cranes and derricks in general industry have been identified that are more protective than federal standards for cranes and derricks in construction. Furthermore, certain subjects have been identified where adoption of the federal construction standards created inconsistencies with state standards for general industry. Since the same cranes can and are often used in both general industry and in construction, sometimes in the same day, it is important that construction and general industry standards for cranes and derricks be harmonized.
- Is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system’s component regulations is provided by such things as the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts.
- Is the least burdensome effective alternative. This rulemaking proposal was developed with the assistance of an advisory committee which included management (crane owners/operators/lessors, AGC, Cal Chamber, contractors’ associations, public and investor-owned utilities), labor (Operating Engineers, IBEW, Ironworkers, Laborers), subject matter experts, other interested parties, and government agencies. Rather than generating sets of competing alternatives, that proceeding was synergistic and resulted in consensus standards which are the basis of this proposal.

Section 1600. Pile Driving.

Subsection (g), Sheet Pile Access, currently provides that a crane-suspended personnel platform may be used for access to sheet piling if used in accordance with GISO, Section 5004. The recently adopted Construction Safety Orders (CSO), Article 15 for cranes and derricks in construction contains more specific requirements for hoisting personnel for pile driving operations in Section 1616.1(p) which are based on federal provisions found in 29 CFR 1926.1431(p). It is, therefore, proposed to change the reference from GISO, Section 5004 to CSO, Section 1616.6(p). The purpose and necessity of this proposal are to prescribe safety in personnel hoisting operations at least as effective as federal standards.

Section 1610.1. Scope, Subsection (c), Exclusions.

Subsection (c) excludes certain specified equipment from the scope of Article 15. Subsection (c)(14) currently excludes “roustabouts” from the provisions of Article 15. There has been much confusion about what a “roustabout” is in this context. It is proposed to change the exclusion to

“Unpowered, rolling material lifts with hand-powered winches (roustabouts).” The purpose and necessity of this change are to clarify this exclusion.

Section 1610.3. Definitions.

This section defines terms used in Article 15. It is proposed to add definitions for “accessory gear,” “dedicated drilling rig,” “designated person,” and “registered professional engineer (RPE).” The purpose and necessity of these amendments are to add greater clarity in the application of Article 15.

Section 1610.4. Design, Construction and Testing.

Section 1610.4 contains requirements applicable to equipment that has a rated hoisting/lifting capacity of more than 2,000 pounds; however, it currently contains no requirements for examinations and proof load testing as required for cranes in general industry by GISO, Section 5022. It is, therefore, proposed to add a new subsection (f) to require that proof load testing and examinations of cranes and derricks in construction be conducted as required by the GISO. The purpose and necessity of this amendment are to provide consistent testing of cranes and derricks, regardless of whether they are currently being used in construction or in general industry related activities.

Section 1610.9. Equipment Over Three Tons Rated Capacity.

This section provides that cranes and derricks used in lifting service, exceeding three tons rated capacity, and their accessory gear shall not be used until the employer has ascertained that such equipment has been certificated as evidenced by current and valid documentation. Subsection (a)(2) requires that certificates attesting to current compliance with testing and examination standards be maintained in a form acceptable to the Division. It is proposed to amend this requirement with a new sentence which will require that a copy of such certificate shall be available with each crane and derrick or at the project site. The purpose and necessity of this amendment are to clarify where the documentation required by subsection (a)(2) shall be maintained (i.e., on-site).

Section 1611.1, Assembly/Disassembly - Selection of Manufacturer or Employer Procedures.

This section provides that when assembling or disassembling equipment (or attachments), the employer must comply with all applicable manufacturer prohibitions and follow either manufacturer or employer-developed procedures. Minor clarifications are proposed that will change “must” to “shall” wherever the word appears and to clarify a note for subsection (b). The purpose and necessity of these amendments are to make the regulation easier to understand and apply.

Section 1612.3. Power Line Safety (All Voltages) - Equipment Operations Closer Than the Table A Zone.

This section currently prohibits equipment operations in which any part of the equipment, load line, or load will be closer to an energized power line than the minimum approach distance under Table A of Section 1612.1. It is proposed to add a new subsection (b) to prohibit operations above energized overhead high-voltage lines. The purpose and necessity of this amendment are to provide consistency with High-Voltage Electrical Safety Orders, Section 2946(b) and to clarify that operations above energized power lines are prohibited regardless of the clearance distance.

Section 1613. Inspections.

A non-substantive amendment is proposed to change the title of this section to “Inspections and Repairs.” The purpose and necessity of this amendment will more accurately reflect the subject matter of its subsections within this section heading and will enable users to locate requirements more easily.

Section 1613.2. Inspections - Repaired/Adjusted Equipment.

Subsection (a) currently provides that equipment that has had a repair or adjustment that relates to safe operation (such as a repair or adjustment to a safety device or operator aid or repairs to a critical part of a control system, power plant, braking system, load-sustaining structural components, load hook, or in-use operating mechanism), shall be inspected by a certifying agency after such a repair or adjustment has been completed and prior to initial use. Two revisions are proposed: (1) to strike “load sustaining structural components” from the parenthetical clause and add a new note stating that load sustaining structural components shall be repaired and inspected in accordance with (new) Sections 1613.11 and 1613.12; and (2) to replace “certifying agency” wherever it appears in this section with “qualified person.”

The purpose and necessity of the first revision are to require repair of load-sustaining members consistent with GISO, Sections 5034 and 5035, which are more protective than the federal standard. The purpose and necessity of the change from “certifying agency” to “qualified person” are to harmonize the state standard with federal verbiage.

Section 1613.10. Inspections - Wire Rope.

If a Category II deficiency is identified, subsection (a)(4)(B) requires that wire rope be removed from service until: (1) the employer complies with the wire rope manufacturer's established criterion for removal from service, or (2) the wire rope is replaced, or (3) the deficiency is localized and the problem is corrected by severing the wire rope in two and repairing it subject to specific provisions. It is proposed to delete the option of complying with the wire rope manufacturer's established criteria for removal from service. The purpose and necessity of this revision are to make CSO criteria for removing wire rope from service consistent with the criteria of the GISO, Section 5031.

New Section 1613.11. Repairs.

This new section will require that repairs to load sustaining members and other critical crane and derrick parts be performed in accordance with the provisions of GISO, Section 5034(e) and (f). The purpose and necessity of this amendment are to make CSO requirements for repairs to load sustaining members consistent with the GISO.

New Section 1613.12. Damaged Booms.

This new section will require that boom sections or boom suspension components that have been damaged be repaired as prescribed by GISO, Section 5035 prior to further use. The purpose and necessity of this amendment are to make CSO requirements for repairs to damaged booms consistent with the GISO.

Section 1616.1. Operation.

Subsection (o).

This subsection currently provides that “the boom or other parts of the equipment shall not contact any obstruction.” It is proposed to revise this subsection to add more specificity to its requirements. The purpose and necessity of these amendments are to clarify the intent of the standard.

Subsection (x).

This subsection currently provides that “the operator shall obey a stop (or emergency stop) signal, irrespective of who gives it.” It is proposed to relocate the substance of this provision to Section 1617.1(b)(2), Signals – General Requirements. The purpose and necessity of this relocation into a signaling section are to clarify the use of and response to signals and to better organize these safety orders.

New Subsection (x).

A new subsection is proposed to require that riggers be trained and capable of safely performing the rigging operation and that trainees be under the direct visual supervision of a qualified person (rigger). The purpose and necessity of this amendment are to ensure that CSO requirements for riggers are consistent with GISO, Section 4999(a).

New Subsection (aa).

A new subsection is proposed to require that the use, care and maintenance of slings shall be in accordance with GISO, Article 101. The purpose and necessity of this amendment are to provide for consistent use, care and maintenance of slings used in construction and general industry.

Section 1617.1. Signals - General Requirements.

Subsection (a)(1).

This subsection provides that a signal person shall be provided when the point of operation, meaning the load travel or the area near or at load placement, is not in full view of the operator. An amendment is proposed to require that a signal person be provided when the point of operation is not in full and direct view of the operator. The purpose and necessity of this amendment are to make the requirement for a signal person equivalent to GISO, Section 5001(a).

Subsection (b).

This subsection provides that only qualified persons shall be permitted to give signals, with an exception that a stop signal may be given by any person. It is proposed to add requirements regarding operator response to signals. The purpose and necessity of these amendments are to consolidate qualifications for signal persons and operator's response to signals into one standard.

Subsection (i).

This subsection currently provides that anyone who becomes aware of a safety problem must alert the operator or signal person by giving the stop or emergency stop signal. It is proposed to delete this subsection and relocate the substance to subsection (b), as discussed above. The purpose and necessity of this amendment are to clarify requirements by consolidating requirements for emergency stop signaling into subsection (b).

Section 1617.2. Signals - Radio, Telephone or Other Electronic Transmission of Signals.

It is proposed to add a new subsection (d) which will require that the signal person audibly or visually signal the operator if the signal person becomes aware that communication with the operator has been interrupted during hoisting operations and that the operator safely stop operations upon being made aware of the break in communications. The purpose and necessity of this amendment are to improve safety when using electronic transmission of signals.

Section 1617.3. Signals – Voice Signals – Additional Requirements.

Subsection (b) currently provides in part that one component of a voice signal is “distance.” This proposal would allow the “distance” command to be “approximate.” The purpose and necessity of this amendment are to clarify the intent of the standard and to allow the standard to be complied with realistically.

Section 1618.1. Operator Qualification and Certification.

This section prescribes requirements for certification of crane operators. There are two options for certification in California: Option (1), certification by an accredited crane operator certifying entity, and Option (2), licensing by a government entity. Currently, Option 2 requirements, which are based on the federal standard, are less stringent than Option 1 and do not require the candidate to pass a physical examination and substance abuse test. This is inconsistent with the requirements for operator certification in the GISO. It is proposed to amend subsection (c)(2) licensing criteria for Option 2 to have the same requirements for a physical examination and substance abuse testing as for Option 1. The purpose and necessity of this modification are to

assure worker and public safety regardless of whether the crane is being operated in construction or in general industry and regardless of whether the operator is licensed by a private or government entity.

Section 1618.1. Operator Qualification and Certification, Exceptions.

Currently, CSO crane operator's qualification and certification are not required for: (1) operation of derricks, side boom cranes or equipment with a maximum hoisting/lifting capacity of 2000 pounds or less, and (2) operation of articulating/knuckle-boom cranes having a boom length of less than 25 feet or a maximum rated load capacity of less than 15,000 pounds when used to deliver material to a construction site. It is proposed to add a third exception which will exempt operators of electric line trucks (digger derrick trucks) subject to the same restrictions that apply to general industry under Exception 2 of GISO, Section 5006.1. The purpose and necessity of this amendment are to provide consistent application of crane operator qualification and certification standards both in construction and in general industry.

Section 1619.1. Tower Cranes.

Subsection (b) applies to erection, climbing (up and down) and dismantling of fixed tower cranes. Subsection (b)(3) requires that tower crane foundations and structural supports be designed by the manufacturer or a certified agent. It is proposed to add clarifying subsections as follows: (A) the foundation and structural supports are to be installed in accordance with the manufacturer's or certified agent's instruction, (B) compliance with the criteria is to be documented, and (C) the foundation and fasteners are to be maintained accessible and visible for inspection at all times. The purpose and necessity of these amendments are (1) to clarify responsibilities for quality assurance in the installation of tower crane foundations and structural supports and (2) to clarify that these critical items must be accessible and visible for inspection at all times.

Section 4885. Definitions.

This section contains definitions for GISO, Group 13, Cranes and Other Hoisting Equipment. It is proposed to add a definition of "accessory gear" to this section. The purpose and necessity for this amendment are to define a term used in, but not yet defined in, the GISO and to ensure that the definition for "accessory gear" is consistent with the definition proposed for CSO, Section 1610.3.

Section 4999. Handling Loads.

This section currently prescribes that, during hoisting, inadvertent contact with obstructions shall be prevented. A revision is proposed to provide that the load, boom, or other parts of the equipment shall not contact any obstruction in a way which could cause falling material or damage to the boom. The purpose and necessity of this amendment are to clarify the intent of the standard and to harmonize the GISO with CSO, Section 1616.1(o).

DOCUMENTS RELIED UPON

1. Instruction to Certifiers, issued by Division of Occupational Safety and Health, July 1, 1998, revised July 21, 1998.
2. Washington Administrative Code (WAC) 296-155-52902, definition for “Dedicated Drilling Rig.”
3. Washington Administrative Code (WAC), Draft, 296-155-53900(15), Tower Cranes – General.
4. Settlement Agreement, USCA Case #10-1311, Document #1325753, Filed 08/24/2011.
5. Federal Register, Vol. 75, No. 152, August 9, 2010, pages 47906 - 48177.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Economic Impact Analysis

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

California recently adopted standards for cranes and derricks in construction as required to be at least as effective as recently adopted federal standards. This proposed rulemaking will harmonize general industry standards for cranes and derricks with those construction standards. Since the same cranes can be used in both construction and in general industry, sometimes in the same day, it is important that construction and general industry standards for cranes and derricks be harmonized to create regulatory uniformity, thus simplifying compliance and reducing costs. This rulemaking was developed with the assistance of an advisory committee. The committee was of the opinion that none of the proposed amendments will significantly impact the cost of doing business in California.

Therefore, the adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

This regulatory proposal is intended to provide worker safety at places of employment in California.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because these

standards do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Board has determined that the proposed amendments may affect small businesses. However, no adverse economic impact is anticipated. The proposal harmonizes construction and general industry standards for cranes and derricks, creating regulatory uniformity and thus simplifying compliance for businesses of all sizes. Consistent and uniform standards will also promote worker safety at places of employment in California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The proposal consists of minor, non-technical changes to existing standards to clarify existing standards and to harmonize construction and general industry practices where appropriate and/or necessary.

This rulemaking is the result of advisory committee deliberations. No less costly alternatives could be identified.